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Attorneys for Defendant

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF NEW YORK

| | | |
|--|----|----------------------|
| TOWN OF AMHERST, NEW YORK, | : | x |
| | : | Case no. |
| Plaintiff, | : | |
| -against- | : | NOTICE OF MOTION AND |
| | : | MOTION |
| SIEMENS INDUSTRY, INC. formerly known as SIEMENS | :: | |
| BUILDING TECHNOLOGIES, INC., | : | |
| Defendant. | : | |

Please Take Notice of the following motion

| | |
|-----------------------|--|
| Moving Party | Defendant SIEMENS INDUSTRY, INC. formerly known as SIEMENS BUILDING TECHNOLOGIES, INC., |
| Time, Date and Place: | The Motion is returnable before a Judge of the United States District Court to be assigned, at the United States Courthouse, 88 Court Street, Buffalo, New York 14202, on February 19, 2010, or at such other date and time as the Court may set. |
| | Defendant respectfully requests oral argument. |
| Relief Requested: | An order under 12(b)(6) of the Federal Rules of Civil Procedure (I) dismissing the first, second, third, and fourth causes of action because the action is time-barred under the applicable statute of limitations; (II) dismissing the third and fourth causes of action for failure to state a cause of action because under the contract annexed to the complaint implied warranties of merchantability and fitness for particular purpose were disclaimed; and |

(III) dismissing the fifth cause of action for failure to state a cause of action because a claim for unjust enrichment is not available between parties to an express contract concerning the contract's subject matter.

Supporting Papers: Declaration of Bryon L. Friedman, Esq., dated January 21, 2010, with exhibits annexed (A) summons and complaint and (B) contract annexed as Exhibit A to the complaint; and Defendant's Memorandum of Law on Support of Motion to Dismiss Under Rule 12(b)(6) Based on Statute of Limitations, Contractual Warranty Disclaimer, and Failure to State a Cause of Action.

Answering Papers: Under Local Rule 7.1(c), answering papers, if any, must be served at least eight (8) business days before the return date of this motion. Defendant respectfully requests the opportunity to file reply papers which, under Local Rule 7.1(c), must be served at least three (3) business days before the return of the motion.

Dated: Purchase, New York
January 21, 2010

Yours, etc.,

LITTLETON JOYCE
UGHETTA PARK & KELLY LLP
Attorneys for Defendant

By: 

Bryon L. Friedman, Esq.
1 Manhattanville Road, Suite 302
Purchase, New York 10577
(914) 417-3400
File no. 00965.00640

TO:

E. THOMAS JONES, ESQ.
TOWN ATTORNEY, TOWN OF AMHERST
Attorney for Plaintiff
5583 Main Street
Williamsville, New York 14221
(716) 631-7030
Attn: Richard L. Woll, Esq.
Deputy Town Attorney
rwall@amherst.ny.us

CERTIFICATE OF SERVICE

I certify that on January 21, 2010, I placed a true and correct copy of the attached

NOTICE OF MOTION AND MOTION

in the United States Mail, in a properly addressed envelope, with first class postage duly paid and affixed to the envelope, and with the envelope addressed to:

E. THOMAS JONES, ESQ.
TOWN ATTORNEY, TOWN OF AMHERST
Attorney for Plaintiff
5583 Main Street
Williamsville, New York 14221
(716) 631-7030
Attn: Richard L. Woll, Esq.
Deputy Town Attorney

Dated: Purchase, New York
January 21, 2010


BRYON L. FRIEDMAN